

**REMARKS**

Claims 1-17, 19-22, 24-41 and 43-58 are currently pending in this application. Claims 1-4, 11, 12, 16, 17, 22, 24, 25, 32, 33, 37, 39-41 and 43-58 are currently before the Examiner, and claims 5-10, 13-15, 19-21, 26-31, 34-36 and 38 have been withdrawn herein.

Submitted herewith in Exhibit A hereto is further evidence in support of patentability in the form of a Declaration under 37 C.F.R. § 1.132 of Melissa Ondo demonstrating the commercial success of the invention as presently claimed.

Applicants respectfully request reconsideration of the subject patent application in light of the above amendments, below remarks and evidence submitted herewith.

**I. Claim Rejections**

In the Office Action mailed April 28, 2006, claims 1-4, 11-12, 16-17, 22, 25, 32-33, 37, 39-41 and 43-58 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,201,948 to Cook et al. (hereinafter, "Cook") in view of U.S. Patent No. 6,793,498 to Nunes and further in view of U.S. Patent No. 6,288,753 to DeNicola. Claim 24 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Cook in view of Nunes and DeNicola. Applicants respectfully traverse the rejections.

For the reasons discussed below, Cook, Nunes and DeNicola do not disclose, teach or suggest each and every element of the pending claims and a prima facie case of obviousness has not been set forth. Moreover, as recited in the Ondo Declaration and as will be shown herein, products having the features recited by at least independent claims 1, 17, 32, 37, 43, 47, 51 and 56-58 have enjoyed significant commercial success, and this commercial success shares a nexus

with the features claimed in at least these independent claims. As such, even if a proper prima facie case of obviousness had been set forth, Applicants respectfully submit that such a prima facie case would be rebutted by this commercial success. However, since no prima facie case of obviousness has been set forth, Applicants respectfully submit that the commercial success further demonstrates the patentability of the invention as presently claimed. As such, the rejections should be withdrawn and the claims should be allowed.

A Declaration under 37 CFR § 1.132 of Melissa Ondo ("the Ondo Declaration") has been submitted herewith in further support of the patentability of the invention as claimed. The Ondo Declaration describes the commercial success that the Assignee of the instant application has experienced as a result of bringing products including the claimed features to market. Indeed, as shown in the Ondo Declaration, the invention as presently claimed has led to commercial success to the tune, quite literally, of hundreds of thousands of students that have been educated using systems embodying the functionality as claimed herein.

Ms. Ondo is the Senior Manager of Product Marketing for Thomson NETg. (Exhibit A at ¶2). Ms. Ondo has been actively involved in marketing products and services to clients, including the Monsoon™ learning platform. (Id. at ¶¶3-4).

The architecture of the Monsoon™ learning platform is built around a dynamic rendering engine having functionality that is substantially similar to that recited in the various independent claims of the instant patent application. (See id. at ¶¶4 – 7). As described in the Ondo Declaration, the commercialized dynamic rendering engine that can render course content in response to a user (e.g., student) input actually satisfies a basis for customer demand delineated

in multiple requests for proposal, as the dynamic rendering engine permits conducting individualized learning sessions with students on a massive scale. (Id. at ¶ 8). Moreover, other claimed features of the Monsoon™ platform, such as the authoring tool used to create learning objects, as well as the learning objects themselves, help provide the advantage of immediate course updates that can be applied across myriad courses that access the learning object. In contrast, in prior systems having static, fixed content, each e-learning course requiring a particular update would have to be edited manually to change the content to reflect the updates – a process that is both time consuming and expensive. However, using the authoring tool to create learning objects facilitates comparatively inexpensive and easy updates because only one learning object is edited that actually may serve as a portion of a myriad of different courses. (Id. at ¶ 9).

In the view of Ms. Ondo, and supported by the statistics she has quoted, the commercial success enjoyed by the Monsoon™ learning platform is attributable mainly to the technical features of the platform as claimed herein. (See id. at ¶ 10). These technical features have enabled Thomson NETg to provide services to over 1,350,000 active learners at over 100,000 client companies. (Id. at ¶ 10). Indeed, since January 1, 2006, there have been over 4,200,000 course launches by active learners. Moreover, since January 1, 2005, there have been over 7,300,000 course launches by active learners. In fact, in 2006, to date, there have been over 15,000,000 active enrollments via the Monsoon™ learning platform. (Id. at ¶ 11).

Moreover, while many customers have licensed the Monsoon™ learning platform in connection with content available from Thomson NETg as indicated above, there are many

customers that have licensed only the underlying Monsoon™ learning platform without content provided by Thomson NETg. (Id. at ¶ 12).

Instead of licensing content from Thomson NETg, these customers use the Monsoon™ platform to author their own content (sometimes with assistance from NETg consultants) to create their own online courses for the specific use of training their employees. The customers have specifically licensed the Monsoon™ learning platform to take advantage of the dynamic rendering engine that permits the use of individualized learning objects. This permits easy updates to the learning objects by the client, which saves the client time and money. Customers that have leveraged the Monsoon™ learning platform in this manner are in various industries, including, for example, the semiconductor industry, information technology, manufacturing, and hospitality industries. Presently, 156 companies utilize the Monsoon™ platform in this manner, using it to educate their employees. Of these clients, approximately 1,400 author licenses are presently in force, wherein each author license provides a license for a client content creator to develop content, for example, at the client location. (Id. at ¶ 13).

The commercial success of the Monsoon™ learning platform is believed to be due principally to its technical features, rather than any extraordinary marketing activities. (Id. at ¶ 14). As such, the commercial success of the Monsoon™ learning platform is most properly attributable to its main technical features, which are claimed in the independent claims of the instant patent application.

For example, Claim 1 of the instant application recites a system for providing an e-learning course, comprising a database and a dynamic rendering engine. The database is for

storing a plurality of reusable learning objects and a profile of at least one student that defines a plurality of course requirements of the student. The dynamic rendering engine is adapted and configured to create an individualized course for the student by assembling a subset of the learning objects in response to an assessment item designed to evaluate whether the student has mastered a learning objective. Moreover, the learning objects are unassembled immediately prior to delivery. As such, Claim 1 recites features that form a nexus with the commercial success of the Monsoon learning platform. (See Ondo Decl.).

Independent claim 17 recites an e-learning tool comprising an authoring tool, a dynamic delivery tool and a learning management system containing a student profile. The authoring tool is operable to create a plurality of learning objects, wherein at least one of the learning objects includes an assessment item for determining the learning objects containing learning objectives familiar to a student. The dynamic delivery tool is operable to dynamically assemble and deliver a course page of instruction embodying at least one learning object, wherein the course page is dynamically assembled by the e-learning tool in response to determining a characteristic of the student by evaluating the assessment item. As such, Claim 17 also recites features that form a nexus with the commercial success of the Monsoon learning platform. (See Ondo Decl.).

Claim 32 recites a system for formulating and distributing an e-learning course, comprising first, second and third software applications. The first software application receives e-learning content and categorizes the content into classes of discrete elements, each discrete element representing a separate characteristic of the e-learning course and its presentation, the classes of discrete elements having pre-defined behaviors and relationships therebetween. The

second software application receives information regarding a student's requirements for the course. The third software application correlates the received information with the classes of discrete elements so as to automatically and dynamically assemble and render the discrete elements as an e-learning course customized to the individual requirements of the student. As such, Claim 32 also recites features that form a nexus with the commercial success of the Monsoon learning platform. (See Ondo Decl.).

Claim 37 recites a method for dynamically delivering a page of e-learning course content to a user. The method includes storing a plurality of discrete learning objects within a database, and assembling and delivering the page including at least one of the learning objects in response to an input from the user in approximately real-time to the user, based upon an assessment item designed to evaluate whether the student has mastered a learning objective. As can be seen, Claim 37 recites features that form a nexus with the commercial success of the Monsoon learning platform. (See Ondo Decl.).

Claim 43 recites an article of manufacture including a computer readable medium having stored thereon instructions for carrying out a method for creating and delivering an e-learning course. The method includes accumulating course content by a first code segment, defining the course content in terms of discrete, reusable learning objects by a second code segment, determining a subset of the learning objects for assembly into the course immediately prior to distribution to a user based on an assessment item designed to evaluate whether the student has mastered a learning objective by a third code segment, and dynamically delivering the subset of

learning objects to the user by a fourth code segment. As such, Claim 43 recites features that form a nexus with the commercial success of the Monsoon learning platform. (See Ondo Decl.).

Claim 47 recites an e-learning development and distribution tool for providing course content. The tool includes means for accumulating and storing a plurality of discrete software entities, wherein each entity embodies one aspect of presenting, accessing or explaining the course content. The tool further includes means for assembling and delivering at least one of the discrete entities to at least one student in response to an input from the student in approximately real-time, such that the student receives an individualized version of the course content, wherein the software entities are unassembled immediately prior to delivery. As such, Claim 47 also recites features that form a nexus with the commercial success of the Monsoon learning platform. (See Ondo Decl.).

Claim 51 recites an article of manufacture including a computer readable medium having stored thereon instructions for carrying out a method for delivering e-learning content. The method includes determining which of a plurality of learning objects will be delivered to a user based on an assessment item designed to evaluate whether the student has mastered a learning objective by a first code segment. As such, Claim 51 similarly recites features that form a nexus with the commercial success of the Monsoon learning platform. (See Ondo Decl.).

Claim 56 recites a method of conducting an e-learning session comprising receiving a student input, in response to the student input, dynamically assembling a set of at least one selected discrete object from a set of multiple selected discrete objects, and transmitting the set of at least one selected discrete object. Claim 57 recites a method of conducting an e-learning

session comprising sending at least one question to a subject to be tested, receiving a response to the at least one question, assembling a page based upon the response, and sending the page to the subject. Claim 58 recites a method of continuing an e-learning session after having received a response to a question, the question relating to a first portion of the e-learning session. The method includes adaptively assembling a second portion of the e-learning session based upon the response and transmitting the second portion of the e-learning session. As can be seen, Claims 56-58 each recite features that form a nexus with the commercial success of the Monsoon learning platform. (See Ondo Decl.).

Moreover, besides the commercial success demonstrated above, a prima facie case of obviousness still has not been set forth with respect to any of the pending claims based on the references of record. Specifically, Applicants respectfully submit that none of the references of record disclose, teach or suggest, alone or in combination, each and every element of Applicants' invention as presently claimed. As such, a prima facie case of obviousness has not been established, and the rejections under 35 U.S.C. §103 should be withdrawn.

Specifically, in contrast to the inventions recited in independent claims 1, 17, 32, 37, 43, 47, 51 and 56-58, Cook describes a system readily comparable to the prior art distinguished in Applicants' background section. Specifically, Cook describes such a "hard wired" e-learning system wherein the course content and the manner in which the course material is applied is fully predetermined prior to a student interacting with the software.

Authoring instructional materials in a course suitable for interactive instruction typically comprises *several steps*, including *decisions about the objects to display to the student*, the *sequencing of these objects*, and the *interactions with the agent*. The first step is the selection of objects which carry the education content



for presentation to a student. Objects can include visual display items, such as text, graphics, animation or movies, audible display items, such as voice, audio and so forth. They can include input items known in the computer arts, such as buttons to select, selections to chose from, text to enter, hypertext and hypermedia links, functions to perform with student input, and so forth. The ***second step*** is the ***selection of the sequencing logic for the ordered display of the objects to the student*** and the educationally appropriate reaction to student requests and responses. The ***sequencing logic*** can reference instructional controls set by agent software 108, such as a command to increase example density, and ***preferably is chosen in light of principles of educational psychology and practice as detailed above.***

(Cook, Col. 11, lines 17-36 (emphasis added)). The “principles of education psychology... as detailed above can be found at Col. 10, lines 40-45:

The structure and course of interactions 103 between the student and the materials is ***preferably governed by paradigms of educational psychology*** and sound educational practice, such as are described in the exemplary reference Englemann et al., 1982, Theory of instruction: principles and applications, New York: Irvington Publisher.

Col. 10, lines 40-45. Thus, when read in the proper context, Cook teaches a system that is fully assembled before a student interacts with the course material based on predetermined conditions – i.e., “paradigms of educational psychology.”

As such, Cook does not disclose, teach or suggest a system or method including a plurality of discrete components (e.g., learning objects) that are unassembled prior to delivery to the student as recited in independent claims 1, 37, and 47, for example. Moreover, Cook does not disclose, teach or suggest assembling data objects in response to an input from a user, student or subject to be tested as recited in independent claims 37, 47, 56 or 57. By way of further example, claim 58 recites a system for continuing an e-learning session that adaptively assembles a second portion of the e-learning session after receiving a response to a question relating to a

first portion of an e-learning session. Cook also does not disclose, teach or suggest determining which of a plurality of learning objects will be delivered to a user based on an assessment item designed to evaluate whether the student has mastered a learning objective as recited in independent Claims 1, 43 or 51. Claim 17 further recites an e-learning tool that assembles a course page in response to determining a characteristic of a student by evaluating an assessment item. Independent Claim 32 recites a system that correlates received information with classes of discrete elements of an e-learning course to dynamically assemble an e-learning course customized to the individual requirements of the student.

Indeed, since the system of Cook is to create a fully preassembled course in a manner “governed by paradigms of educational psychology,” Cook teaches against assembling a course based on a student’s response to an assessment item, for example. Therefore, modifying Cook to function in a manner similar to Applicants’ invention as claimed in Claims 1, 43 or 51, for example, would require changing the principle of operation of the system in Cook and therefore “renders the prior art unsatisfactory for its intended purpose.” MPEP §2143.01. Indeed, modifying Cook to operate in a manner similar to any of the Claimed elements illustrated in the previous paragraph would lead to a similar result. This is powerful evidence of the non-obviousness of the invention as now claimed.

The other references identified by the Examiner in the Office Action do not remedy the deficiencies of Cook. Specifically, none of the references of record disclose, teach or suggest each and every element of Applicants' claims as described above with reference to Cook.

For example, DeNicola does not create and render course content in response to an input from a user, student or subject to be tested as claimed in independent Claims 37, 47, 56 or 57. Instead, course materials are created by a human instructor using the software. For example, DeNicola teaches an exam building system (Col. 13, lines 8-35) wherein it is the instructor that decides what information appears in the exam. When the exam is administered to the student (Col. 11, line 59 – Col. 12, line 10), although the order of questions on the exam can be jumbled from student to student, the overall content is static since "each student is tested with the same questions but in a different order." DeNicola also discloses building exams and workbooks internally (apparently within the testing organization) between Col. 15, line 62 and Col. 16, line 46. While a "workbook building scripts engine 472" is provided, it is clear that a workbook is "built" in response to input from an "instructor or other authorized administrator" in contrast to a student input, or the input of a user, student or individual to be tested.

Nunes is even less relevant. Specifically, like Cook, the course content in Nunes is predetermined, and is not determined in response to a user or student input or the input of an individual to be tested, as presently claimed in Claims 37, 47, 56 or 57, for example. Specifically, Nunes teaches a developmental network 1 including a plurality of nodes 2. (Col. 5, lines 1-5). Each node represents a location where a particular skill can be developed (Col. 5, lines 30-40) using activity objects or modules 7. (Col. 5, line 66 – Col. 6, line 6). The content appears to be static at each node, and does not suggest dynamic rendering of the content, in contrast to the present invention as claimed in Claims 1, 17 and 32, for example. Nunes does disclose a system for assessing the user between Col. 14, line 19 and Col. 15, line 8. Again, like

Cook, it appears that the content of this assessment system is fixed and is "hard-wired" rather than dynamic. Instead, a user of the system is intended to progress along "a large number of different, ***but logically well-defined developmental paths.***" (Col. 15, lines 49-52). It is submitted that this is an express teaching of a "hard wired" system analogous to Cook, and not analogous to the invention as claimed in various claims of Applicants.

Moreover, "[t]he references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention." MPEP § 2141.01. Here, if the rejections were to be maintained, they would necessarily "include knowledge gleaned only from [A]pplicants' disclosure" since whole elements of Applicants' invention as presently claimed are missing from the prior art. Any attempt to fill in those gaps using Applicants' disclosure therefore constitutes impermissible hindsight. MPEP § 2145(X)(A). Thus, Applicants respectfully submit that no prima facie case of obviousness exists with respect to Applicants' claimed invention.

Likewise, the references of record are not properly combinable because there is no motivation to do so. "[T]here must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine reference teachings." MPEP § 2145(X)(C). Here, Applicants respectfully submit that there is no suggestion in the references themselves to cause them to be combined to arrive at Applicants' invention as claimed, particularly since whole elements of Applicants' claims are absent from the references of record. Moreover, Applicants respectfully submit that one of ordinary skill in the art would not be motivated to combine the references of record to arrive at

Applicants' claimed invention at least because such a combination would require changing the principle of operation of Cook, Nunes and DeNicola. MPEP § 2143.01.

However, even if Cook, DeNicola and Nunes were combined, each and every element of each independent claim would still not be present in such a combination. As such, a prima facie case of obviousness has not been set forth for any of the pending Claims.

It is submitted that each of independent claims 1, 17, 32, 37, 43, 47, 51 and 56-58 patentably distinguish over Cook, Nunes and DeNicola, alone or in combination. Since these references do not disclose, teach or suggest each and every element of independent claims 1, 17, 32, 37, 43, 47, 51 and 56-58, it is submitted that these claims are not anticipated or rendered obvious.

With further reference to claim 24, the Examiner has explicitly acknowledged that no references disclose a virtual campus as claimed. As such claim 24 is allowable. If the Examiner is relying on Official notice to cure this deficiency in the references, Applicants respectfully request that a reference be provided as required by MPEP § 2144.03(C), since it is not believed that the patentably distinguishing feature added by dependent Claim 24 is "Based Upon Common Knowledge." In response Applicants earlier request for a reference filed on June 30, 2006, the Examiner's entire reply was "Applicants' arguments are not persuasive. Applicants are referred to the prior office action." This is not a sufficient reply to Applicants' request. Applicants repeat their request for a reference showing that claim 24 "is based upon common knowledge", as alleged by the Examiner.

Similarly, since dependent claims 2-16, 19-22, 24-31, 33-36, 38-41, 44-46, 48-50 and 52-55 each depend from one of properly allowable independent claims 1, 17, 32, 37, 43, 47 and 51, those dependent claims are also allowable. Moreover, it is respectfully submitted that the claimed subject matter added by dependent claims 2-16, 19-22, 24-31, 33-36, 38-41, 44-46, 48-50 and 52-55 further distinguishes those claims from the art of record.

Based on the above remarks and evidence of commercial success of the invention, Applicants respectfully request for the rejections under 35 U.S.C. § 103 to be withdrawn.

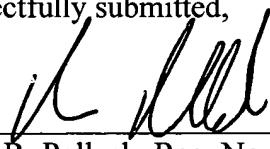
Formal Request For Interview

Applicants for at least the third time respectfully request an interview with the Examiner to discuss the present application and the prior art of record. Applicants' attorney of record Brian Pollack may be reached at (203) 353-6876 to schedule a mutually convenient date and time for the interview.

**CONCLUSION**

Applicants respectfully submit that none of the prior art of record, alone or in combination, discloses or suggests the invention as claimed. Based upon the foregoing, favorable consideration of the pending claims is respectfully requested. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 62434(49004).

Respectfully submitted,



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